

## Wage and Hour Division, Labor

## § 780.614

of the exemption at the time of its adoption on the floor of the Senate (107 Cong. Rec. (daily ed., April 19, 1961), p. 5879), that the word means “most of his time.” The Department of Labor will consider that an employee who spends more than one-half of his hours worked in the particular workweek in agriculture, as defined in the Act, is “primarily” employed in agriculture during that week.

### § 780.608 “During his workweek.”

Section 13(b)(13) specifically requires that the unit of time to be used in determining whether an employee is primarily employed in agriculture is “during his workweek.” The employee’s own workweek, and not that of any other person, is to be used in applying the exemption. The employee’s employment must meet the “primarily” test in each workweek in which the exemption is applied to him.

### § 780.609 Workweek unit in applying the exemption.

The unit of time to be used in determining the application of the exemption to an employee is the workweek. (See *Overnight Transportation Co. v. Missel*, 316 U.S. 572.) A workweek is a fixed and regularly recurring interval of seven consecutive 24-hour periods. It may begin at any hour of any day set by the employer and need not coincide with the calendar week. Once the workweek has been set it commences each succeeding week on the same day and at the same hour. Changing of the workweek for the purpose of escaping the requirements of the Act is not permitted.

### § 780.610 Workweek exclusively in exempt work.

An employee who engages exclusively in a workweek in duties which come within the exemption under section 13(b)(13) and is paid in accordance with the requirements of that exemption, is exempt in that workweek from the overtime requirements of the Act.

### § 780.611 Workweek exclusively in agriculture.

In any workweek in which the employee works exclusively in agriculture, performing no duty in respect

to livestock auction operations, his exemption for that week is determined by application of sections 13(a)(6) and 13(b)(12) to his activities. (See subparts D and E of this part.)

### § 780.612 Employment by a “farmer.”

A further requirement for exemption is the expressed statutory one that the employee must be employed in agriculture by a “farmer.” Employment by a nonfarmer will not qualify an employee for the exemption.

### § 780.613 “By such farmer.”

The employee’s primary employment in agriculture during the exempt week is also required to be by “such farmer.” The phrase “such farmer” refers to the particular farmer by whom the employee is employed in agriculture and who engages in the livestock auction operations as an adjunct to his raising of livestock. Even if an employee may spend more than half of his work time in a workweek in agriculture, he would not be exempt if such employment in agriculture were engaged in for various persons so that less than the primary portion of his workweek was performed in his employment in agriculture by such farmer. For example, an employee may work a 60-hour week and be employed in agriculture for 50 of those hours, of which 20 hours are worked in his employment by the farmer who is engaged in the livestock auction operations, the other 30 being performed for a neighboring farmer. Although this employee was primarily employed in agriculture during the workweek he is not exempt. His primary employment in agriculture was not by the farmer described in section 13(b)(13) as required.

### § 780.614 Definition of a farmer.

The Act does not define the term “farmer.” Whether an employer is a “farmer” within the meaning of section 13(b)(13) must be determined by consideration of the particular facts, keeping in mind the purpose of the exemption. A full discussion of the meaning of the term “farmer” as used in the Act’s definition of agriculture is contained in §§ 780.130 through 780.133. Generally, as indicated in that discussion,